

Letter of Findings Number: 06-0166
Sales/Use Tax
For the Year 2002-2004

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ISSUES

I. Sales/Use Tax—Manufacturing

Authority: IC § 6-2.5-5-5.1; *Mynsberge v. Department of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999).

Taxpayer protests a use tax assessment for dyed diesel fuel that it claims is used in manufacturing.

II. Sales/Use Tax—Fuel Used in Vehicles

Authority: IC § 6-2.5-3-4; IC § 6-2.5-7-3; IC § 6-2.5-9-4.

Taxpayer protests a use tax assessment for undyed diesel fuel for which it claims to have previously paid sales tax.

III. Sales/Use Tax—Leased Property

Authority: IC § 6-2.5-3-4.

Taxpayer protests a use tax assessment with respect to vehicles that it leases from third parties.

IV. Sales/Use Tax—Refunds

Authority: IC § 6-2.5-6-14.1; IC § 6-8.1-9-1.

Taxpayer protests the denial of a refund for sales tax erroneously collected from one of its customers.

STATEMENT OF FACTS

Taxpayer is a company engaged in the business of providing explosive services for quarries. As part of its business, Taxpayer purchased dyed (offroad) diesel fuel. Taxpayer placed the fuel in one compartment of a specialized vehicle. A second compartment contained an oxidizer, such as ammonium nitrate.

When Taxpayer arrived at a quarry, the specialized truck combined the fuel and oxidizer to produce an explosive mixture. The mixture was inserted into a hole drilled in the solid rock, then detonated. After the explosion, the loosened rock could be further processed into usable products. Taxpayer purchased the diesel fuel exempt from sales tax, claiming a manufacturing exemption based on the fuel's use as a blasting material.

In addition, Taxpayer was assessed use tax on undyed diesel fuel used in Taxpayer's vehicles. Taxpayer provided receipts for its purchases of fuel; however, the receipts did not separately list sales tax imposed on the fuel. The Department imposed use tax with respect to these purchases of undyed diesel fuel.

Taxpayer was further assessed use tax with respect to vehicles that it leased from third-parties. Finally, Taxpayer filed a claim for refund with respect to sales tax that it erroneously collected from one of Taxpayer's vendors, which the Department denied.

Taxpayer protested the assessment and the denial of refund. The Department conducted a hearing, and this Letter of Findings results. Additional facts will be supplied as necessary. Any issues not specifically addressed in this Letter of Findings are considered to be determined in accordance with the Department's audit.

I. Sales/Use Tax—Manufacturing

DISCUSSION

The first issue is with respect to use tax imposed on fuel that Taxpayer purchased for its blasting operations. Taxpayer argues that its fuel oil is combined with an oxidizer (generally ammonium nitrate) to create a mixture that is injected into holes for blasting solid stone. Taxpayer asserts that the blasting of solid rock to produce marketable stone constitutes manufacturing. Therefore, because the blasting is part of a manufacturing process, Taxpayer is claiming the fuel used in the manufacturing is exempt.

IC § 6-2.5-5-5.1 states (*emphasis added*):

(a) As used in this section, "tangible personal property" includes electrical energy, natural or artificial gas, water, steam, and steam heat.

(b) Transactions involving tangible personal property are exempt from the state gross retail tax if *the person acquiring the property* acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in *the person's business* of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

In the current case, Taxpayer generally conducts explosions on behalf of third parties. Taxpayer is hired as a contractor to conduct blasting operation on behalf of its customers. Taxpayer also conducts limited blasting operations to obtain rock for its own purposes. Taxpayer is not consuming the tangible personal property for *its* manufacturing business; Taxpayer acquires and consumes the fuel for *its customers'* manufacturing operations. See also *Mynsberge v. Department of State Revenue*, 716 N.E.2d 629, 635-636 (Ind. Tax Ct. 1999) (discussing

the limitations of persons who may claim certain sales tax exemptions). Therefore, Taxpayer is not using the dyed fuel for manufacturing its own tangible personal property, except to the extent that Taxpayer otherwise produces stone for sale in Taxpayer's operations. Thus, Taxpayer's protest is denied except to the extent that Taxpayer can demonstrate that it used the dyed fuel in explosions of rock for Taxpayer's own operations.

FINDING

Taxpayer's protest is denied except to the extent that Taxpayer produces usable stone for Taxpayer's own operations.

II. Sales/Use Tax—Fuel Used in Vehicles

DISCUSSION

Taxpayer asserts that the use tax assessed with respect to undyed motor fuel used in its vehicles was improper. In particular, Taxpayer argues that it paid sales tax at the time it purchased the fuel and therefore it should receive a credit for that sales tax.

Taxpayer asserts that the sales tax on fuel is included in the purchase price of the fuel. Thus, unless the driver presents an exemption certificate at the time of purchase, Taxpayer paid the sales tax at the time of purchase. Taxpayer also asserts that its employees are not permitted to carry exemption certificates per Taxpayer's company policy.

In general, the retail price listed for tangible personal property cannot include sales tax. IC § 6-2.5-9-4. However, this section has a specific exception for transactions provided in IC § 6-2.5-7.

IC § 6-2.5-7-2 generally requires that retail merchants of gasoline or special fuel display the full price (including sales tax) in the price listed at the metered pump. IC § 6-2.5-7-3(b) requires a retail merchant to collect the sales tax from customers unless that customer provides an exemption certificate to the merchant.

However, the Department noted that the receipts that Taxpayer provided for fuel payments did not list the sales tax paid by Taxpayer. Based on the absence of separately stated sales tax on Taxpayer's receipts, the Department determined that Taxpayer did not pay sales tax on its fuel purchases. Taxpayer asserted that the receipts did not itemize sales tax paid on fuel purchases because of the initial inclusion of the sales tax in the price listed at the fuel pump. Therefore, Taxpayer claims the exemption under IC § 6-2.5-3-4(a)(1) for tangible personal property upon which sales tax had been previously paid.

With respect to Taxpayer's contention that it paid sales tax at the time it purchased the fuel, Taxpayer has provided sufficient information to conclude that it paid sales tax on the fuel used in its vehicles, and therefore is sustained.

FINDING

Taxpayer's protest is sustained.

III. Sales/Use Tax—Leased Property

DISCUSSION

Taxpayer protests the assessment with respect to vehicles that Taxpayer leased from third parties. The Department determined that the vehicle lessors did not charge sales tax to Taxpayer, and assessed use tax.

IC § 6-2.5-3-4(a)(1) allows for a use tax exemption for tangible personal property upon which a taxpayer has previously paid sales tax. Taxpayer has provided lessors' records to substantiate its claim that Taxpayer paid sales tax with respect to several leased vehicles.

Taxpayer also concedes that it did not pay sales tax on other leases, and is denied with respect to the leases on which it did not pay sales tax.

Taxpayer also argues that the location of one leased vehicle changed from Indiana to Kentucky. Taxpayer notes that the cost center (i.e., the location to which expenses were allocated) of the vehicle did not change; however, the vehicle was no longer in Indiana during the audit period. Taxpayer has provided sufficient information to substantiate this contention and is therefore sustained with respect to the vehicle moved from Indiana to Kentucky.

FINDING

Taxpayer's protest is sustained to the extent that Taxpayer has provided records showing payment of sales tax and denied to the extent that Taxpayer has not provided records showing payment of sales tax. Taxpayer's protest is sustained with respect to the leased vehicle that was not used in Indiana.

IV. Sales/Use Tax—Refunds

DISCUSSION

Taxpayer argues that the Department should grant a claim for refund for one of its customers to which Taxpayer charged sales tax. Taxpayer asserts that the customer was exempt from sales tax. Thus, Taxpayer's charges for sales tax were erroneous and accordingly Taxpayer should be refunded the money.

Taxpayer charged \$30,941 of sales tax in August 2002. During previous periods, Taxpayer took credits of \$12,334 against its sales tax due on previous sales tax returns, and granted the customer these amounts as offsets against the customer's purchases. Taxpayer filed a claim for the remaining \$18,607 not previously taken as a credit.

In order to qualify for the refund, Taxpayer must meet two tests beyond the test of erroneous payment or collection. First, Taxpayer had to file the claim for refund in a timely manner. Taxpayer filed the claim for the 2002

refund in March 2006.

Ordinarily, a refund claim must be filed within three years after the due date of the return or the date of payment, whichever is later. For sales tax, the due date for the return is "end of the calendar year which contains the taxable period for which the return is filed." However, under IC § 6-8.1-9-1(g),

If an agreement to extend the assessment time period is entered into under [IC 6-8.1-5-2\(f\)](#), the period during which a person may file a claim for a refund under subsection (a) is extended to the same date to which the assessment time period is extended.

Taxpayer and the Department agreed to an extension of the assessment time period for 2002. The extended time period ended April 15, 2006. The period for filing a claim for refund was also extended to April 15, 2006, because the extended time period for assessment is also the extended time period for a refund claim. Taxpayer's refund claim—filed in March 2006—was filed before the expiration of the extended time period, and therefore was timely filed.

Second, Taxpayer must agree to refund the erroneous tax payment to the customer. IC § 6-2.5-6-14.1 (previously codified as IC § 6-2.5-6-14 (first version) prior to July 1, 2004) states,

Notwithstanding the refund provisions of this article as incorporated from the gross income tax law ([IC 6-2.1](#), repealed), a retail merchant is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected.

In this particular instance, Taxpayer has agreed to credit—and has credited—the customer from whom Taxpayer erroneously collected the tax. However, Taxpayer has not indicated that the balance of the erroneous tax collected—the subject of Taxpayer's refund claim—has been refunded to the customer as required under IC § 6-2.5-6-14.1. The lack of payment by Taxpayer to the customer for the erroneously paid taxes bars Taxpayer's refund claim.

FINDING

Taxpayer's protest is denied.

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